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DIVISION OF  
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RE: Citizen's complaint and objection to bond release submitted to the Division of Oil, Gas and Mining by Jack Otani against North American Equities pursuant to § 40-10-21 and § 40-10-16, Utah Code Annotated (1953, as amended).

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This matter was set for informal hearing at the request of Jack Otani ("Otani"). Otani's request for hearing contained several concerns regarding the reclamation conducted by North American Equities ("NAE") at the Blazon #1 Mine and he also objected to the proposed Phase I bond release for NAE. The informal hearing was conducted in Price, Utah on December 12, 1989, before Hearing Officer Barbara W. Roberts.

Complainant Otani was present and represented by Keith H. Chiara and Duane Smith. The Division of Oil, Gas and Mining ("Division") was represented by Lowell P. Braxton, Susan Linner and Randall Harden. The Operator, NAE, was not present nor represented by counsel at the hearing.

The decision and reasons therefor are based upon testimony and evidence presented at the informal hearing and upon documents contained in the Division's files.

#### FINDINGS, CONCLUSIONS AND REASONS

1. Otani, by undated letter received by the Division on August 17, 1983, urged the Division to allow an exploration access road which had been developed within the mine permit area to remain unreclaimed because, in his opinion, "...additional work in the area would prove unrepairable...." The Division determined that the road was unstable and Otani's request to forego reclamation was "unreasonable". By Division directive, the exploration access road was reclaimed.

2. In 1985, the Reclamation Plan ("Plan") for the subject property was approved by the Division. The Plan included as an alternative to restoration to the premining uses, a light industrial postmining land use for a portion of the mine site. This alternative was negotiated between NAE and Otani and approved by the Division. Pursuant to UMC 786.11 of the Utah Coal Mining and Reclamation Regulatory Program, Rules Pertaining to Underground Coal Mining Activities ("Rules"), NAE published notice of the Plan application. Otani did not object to approval of the Plan within the time permitted by law for objection.

3. Sometime subsequent to the 1985 approval of the Plan, winter snows caused the collapse of a building intended by Otani for the postmining use of the property. As a result of this incident and other matters outside of the scope of this hearing, a dispute arose between Otani and NAE over compensation allegedly owed to Otani by NAE.

4. In 1987, the Division determined that certain changes were necessary to the Plan before actual reclamation activities could begin. Specifically, the Division determined that the 8% grade described in the Plan for the Transformer Access Road was in error and that the existing 15% grade would not meet stability standards for leaving as a postmining structure. The Division directed NAE to bring the road up to standards or to reclaim the road. In 1988, NAE submitted plans to reclaim the Transformer Access Road and the Division approved them as an amendment to the Plan.

5. Since access to the water tanks and transformer pad was gained by the Transformer Access Road, the Division directed NAE to remove those structures and reclaim that disturbed area.

6. Reclamation activities were commenced and, except for meeting revegetation success standards, substantially completed by the close of 1989 and notice of Phase I bond release was published.

7. The Division received a citizen's complaint from Otani dated March 20, 1989, which listed several concerns regarding the reclamation of the property. The Division specifically responded to each of Otani's concerns by letter dated April 27, 1989. Both documents are attached hereto as Attachments 1 and 2.

8. The Division received another letter from Otani dated October 3, 1989, which listed more concerns to which the Division responded on October 16, 1989. These letters are attached hereto as Attachments 3 and 4.

9. The Division received a third letter from Otani dated November 3, 1989, requesting this informal hearing and listing several more concerns to which the Division responded during the hearing on December 12, 1989.

10. The Division's written responses to the concerns listed in the letters dated March 20 and October 3 described the Division's findings and reasons for the actions taken on each individual concern. Those findings and actions taken are both reasonable and within the discretion provided to the Division by the applicable Rules.

11. The Division's responses to the letter of November 3 are described below and are both reasonable and within the discretion provided to the Division by the applicable Rules.

Concern #1: In the original reclamation plan, netting was to be used on all steep slopes. No netting was used and vegetation has failed to grow on the steep slopes.

Response: The mulching plan originally approved in 1985 required straw mulch on all revegetated areas and anchoring the straw by crimping or netting, depending on slope. On October 13, 1988, the Division approved an alternative mulching plan which entailed hydromulching and the use of a chemical tackifier. While this approval did not specifically exempt the netting to anchor mulch on steep slopes, it was implied since the industrial practice is to anchor hydromulch with chemical tackifier on similar slopes. Where the Division determined vegetation establishment to be unsatisfactory, NAE was required to reseed. Straw mulch, anchored with netting, was used on those areas where hydromulch failed to stabilize the surface.

Concern #2: The Little Snyder drop inlet as well as the slopes on both north and south sides of Little Snyder are encroaching on the lower pad area.

Response: NAE was required to do some backfilling and grading to stabilize the slope immediately adjacent to the lower pad. In addition, as was discussed in the letters of April 10 and October 16, modifications to Little Snyder drainage were requested by NAE and approved by the Division.

Concern #3: The road highwall on the west side of Mud Creek should be recontoured to the original slope. If not, it should be revegetated with the aid of erosion control netting.

Response: At the request of Otani, the Division approved retention of the access road in question in the 1985 Plan. This would negate recontouring. Since there was existing vegetation on the cut slope and the slope appeared to be stable, the Division determined that no revegetation effort would be required unless revegetation monitoring indicated insufficient vegetation to meet reclamation standards.

Concern #4: The original reclamation plan called for the operator to place top soil on the slope areas. It is obvious that the top soil was not used appropriately and the owner should be compensated therefore.

Response: Topsoil that was stockpiled during construction of the mine was replaced to the extent that stockpiled sources allowed. All cover materials placed by the NAE during reclamation have been analyzed for toxic and acid forming character, and NAE is in compliance at this time. Since the originally salvaged topsoil was designated for reclamation of the disturbed area, and was use for that purpose, NAE is in compliance with that section of the Plan. The Plan did not dedicate topsoil to those portions of the disturbed area that would be used for light industrial as a post mining land use because topsoil was not required for that land use. A request for compensation is not properly the subject of this hearing.

Concern #5: The Bond Release Notice indicates that many of the reclamation items took only 8 days to complete. This is a total falsehood which should be corrected.

Response: The 8 day period described in the Notice relates to the range of dates on which different activities were completed by NAE. This is not to say that the activities were commenced and completed within the 8 days.

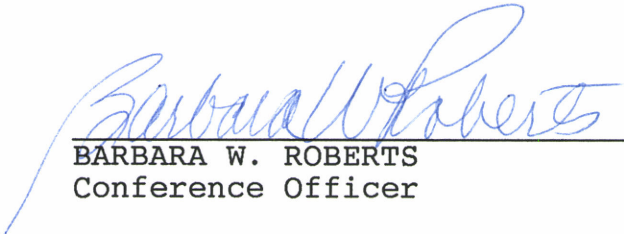
ORDER

Upon review of the facts as described by the parties to this matter and upon review of the law as it relates to those facts, it is HEREBY ORDERED that NAE is currently in compliance with the Rules and the Plan and, therefore, the citizen's complaint and objection to the bond release which are the subject of the Order are dismissed.

Pursuant to § 63-46b-12, if any party wishes to appeal this decision to the Board of Oil, Gas and Mining, a Request for Agency Action, substantially in the form as designated for Petitions in the Board's Rules, must be received no later than the close of business 30 days from the date of this Order.

Pursuant to § 63-46b-14(3)(b), if any part wishes to seek judicial review of this decision, such appeal must be filed not later than 30 days from the date of this Order.

DATED March 19, 1990.

  
BARBARA W. ROBERTS  
Conference Officer

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the foregoing Findings, Conclusions and Reasons and Order was mailed first class, postage prepaid, to Keith H. Chiara, 37 East Main Street, P.O. Box 955, Price, Utah 84501 and William B. Prince, HOLME, ROBERTS AND OWEN, 50 South Main Street, #900, Salt Lake City, Utah 84114 on March 19, 1990.

